REMARKS

Claims 1-12 have been canceled without prejudice or disclaimer. Claims 13-21 have been added. Support for the new claims can be found in the original specification and claim 1.

Claims 1-12 were rejected under 35 U.S.C. § 102(b) as being anticipated by Zehner et al. (U.S. Patent No. 5,447,917) on the ground of inherent anticipation. These claims have been canceled. Accordingly, this rejection is moot.

Claims 13-21 avoid the inherent anticipation rejection based on Zehner et al. '917 because the process differs from that taught by Zehner et al. '917 and the subject being treated is also different. Zehner et al. '917 teaches, as pointed out by the examiner, that D-tagatose can be used as an anti-hyperglycemic agent in the treatment of diabetes. Specifically, Zehner et al. teaches a method of treating a diabetic patient to inhibit the rise in blood sugar (col. 3, lines 12-21), by administering to such a patient D-tagatose in an amount of 1 gram per kilogram of weight of the patient (claim 2).

Zehner et al. does not teach and does not recognize that D-tagatose was effective to "selectively" induce butyrate production and to "selectively" stimulate the growth of lactobacilli and lactic acid bacteria in the human colon, or that it could be administered to a human patient to cause these effects (whether or not they had diabetes). The claims in this application recite a method for treating a human in need of selective production of butyrate or selective stimulation of the growth of lactobacilli and lactic acid bacteria—a population of individuals different from the diabetics treated in the method taught by Zehner et al. According to the analysis of the Office, the "subjects" of treatment are not identical in Zehner et al. and the claimed processes.

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The claimed invention involves administration of D-tagatose in a daily amount of 5-30 grams to selectively induce production of butyrate and/or selective stimulation of the growth of lactobacilli and lactic acid bacteria in the human colon. This is significantly less than the daily dosage suggested in Zehner et al. (1 g per kg) unless the patient weighs less than about 70 pounds (30 kg of body weight would be less than about 70 pounds). In other words, for a subject to receive 30 grams according to the method of Zehner et al. they could only weigh 30 kg. There is no indication that Zehner et al. is treating children or others with a relatively low body weight compared to a normal adult. Accordingly, the recited parameters of the claimed process are different than those of the process taught by Zehner et al. Accordingly, since the teachings of Zehner et al. are different than the method claimed in this application in both the amount of D-tagatose administered and the subject being treated, these claims can not be anticipated by Zehner et al.

Please grant any extensions of time required to enter this reply and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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